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No. 08-795

Supreme Court, U.S.
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In The Supreme Court of the United States

SAMUEL T. BISAWROS,

Petitioner

v.

RODOLFO LICEA

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Virginia

PETITION FOR REHEARING

SAMUEL T. BISTAWROS
1793 Ivy Court
Woodbridge, Virginia 22191
(703)492-2438

Petitioner in Pro Se

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PETITION FOR REHEARING

Pursuant to Rule 44.1, petitioner petition this Court for rehearing.

STATEMENT OF FACTS

This petition involves an individual, Samuel T. Bistawros representing himself in the court of law. Petitioner was the Plaintiff in a Civil action against Respondent Rodolfo Licea in the Circuit Court, 31st Judicial Circuit of Virginia. The causes of action were willful assault and battery causing injury to petitioner. On December 18th, 2006, Respondent Licea pulled Petitioner's left arm by force which caused permanent injury to left shoulder of petitioner. On February 11, 2007, the trial court canceled the testimony of Dr. Brian Stephens, M.D. Orthopedic, who diagnosed petitioner's injuries.

On February 15th, 2007, the trial Court entered a final judgment and stated that Petitioner's injury was self inflected or/and he injured himself. There was no qualified medical expert testified nor any medical evidence supported such judgment.

On March 7th, 2007, Petitioner filed an appeal to Supreme Court of Virginia which denied his petition for appeal. Subsequently Petitioner filed a rehearing of his petition for appeal which the court denied it again without stating any reason or/and ground. There was no transcript and petitioner's statement of facts in lieu of

transcript was denied by trial judge. The judge ordered the final judgment which was in favor of Respondent to be the statement of facts in lieu of transcript.

Petitioner's rights of the Due Process of Laws Clause and Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution have been violated and the State Courts were in error insofar as the Framers themselves were concerned.

On Friday, October 26th, 2007, Petitioner had a hearing of his motions in Courtroom of Judge Potter and Attorney for Respondent was present. While Petitioner was standing behind Plaintiff's table talking to Judge Potter, the Bailiff, Deputy Sheriff Kevin Rock approached Petitioner and pushed his right hand hard against Petitioner's right hand which constituted assault and battery under Code of Virginia § 18.2-57. The Bailiff Rock not only injured Petitioner but also interrupted him while he was stating his oral argument. Petitioner complained to Judge Potter that the Bailiff Kevin Rock assaulted and battered him in the Courtroom . Judge Potter said that this was out of his jurisdiction. Trial Judge Potter failed to protect Petitioner's human rights under Fourteenth Amendment to U.S. Constitution Bailiff Rock was under his administrative capacity.

Petitioner Samuel T. Bistawros was assaulted and battered in front of the Judge in his Courtroom. The subject matter here is the abusive and offensive malicious

treatment to petitioner, in violation of his civil rights. Petitioner's experience in the State Court was intimidation, maltreatment and discrimination against him. In this case there is a serious violation of State and Federal law.

Judicial Conduct for the Commonwealth of Virginia, Canon 3B (3) provides in pertinent part:
"A judge shall require order, decorum, and civility in proceedings before the judge.
Commentary: "Require." The rule prescribing that a judge "require" certain conduct of others are, like all rules in these Canons, rules of reason the use the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control."

U.S. Code Title 42 § 1981 stated:
"All persons within the jurisdiction of the United States shall have the same right in every state and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property..."

And U.S. Code Title 42 §1983 provided:
"Every person who, under ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured in action at law."

Petitioner filed this petition to seek the intervention of U.S. Supreme Court which is the guardian and the interpreter of the Constitution. The Fourteen Amendment to the U.S. Constitution to **association, privacy, liberty, and equal justice under law**. The duty of this Court is to resolve the conflict in the interpretation of the provision of the federal constitution and correct an egregious departure from the accepted and usual course of judicial proceedings.

This Court grants petitions for rehearing in only exceptional circumstances. Petitioner respectfully submit that the ramifications of the Court's decision, which may not have been fully briefed at the merit stage, cry out for a second look.

REASONS TO GRANT PETITION FOR REHEARING

I. The Fourteenth Amendment to the United State Constitution protects Petitioner's Rights of Due Process of Law

"Section1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This section gave rise to three major legal doctrines: (1) Due Process; (2) Equal Protection; (3) Incorporation.

Due Process Clause, has been... frequently interpreted as placing limitations on laws and legal proceedings, in order for judges instead of legislators to define and guarantee fundamental fairness, justice, and liberty. This interpretation has often proven controversial, and analogous to the concepts of natural justice and procedural justice used in various other jurisdictions ... As a limitation on Congress, the Due Process Clause has been interpreted by the Supreme Court as a remedial requirement when constitutional rights have been violated.

Justice Clarence Thomas stated as follows, in 2004 dissent: "As an initial matter, it is possible that the Due Process Clause requires "that our government must proceed according to the 'law of the land'— that is, according to written constitutional and statuary provisions." In re Winship, 397 U. S. 358, 382 (1970) (Black, J. Dissenting).

Procedural due process is essentially based on the concept of "fundamental fairness". As construed by the courts, it includes an individual's rights ..., the opportunity to be heard in the proceedings, and that the person or

panel making the final decision over the proceedings be impartial in regards to the matter before them."

Equal Protection Clause, part of the Fourteenth Amendment to the United States Constitution, provides that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws". The Equal Protection Clause can be seen as an attempt to secure the promise of the United States' professed commitment to the proposition that **"all men are created equal"** by empowering the judiciary to enforce that principle against the states."

Equal protection of the law is the right of all persons to have access to the law and courts, and to be treated equally by the law and courts, both in procedures and in the substance of the law. It is akin to the right of due process of law, but in particular applies to equal treatment as element of fairness. The most famous case on the subject is Brown v. Board of Education of Topeka (1954) in which Chief Justice Earl Warran, for unanimous Supreme Court, rule that "separate but equal" educational facilities for blacks was inherently unequal and unconstitutional since segregation school system did not give all students equal rights under the law." Bolling v. Sharpe, 347 U.S. 497 (1954); Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925).

Indeed, this Court has not hesitate to condemn violations of the Fourteenth Amendment even when

circumstances of the specific case were out of the ordinary.

II. Rehearing is Warranted because the Court should has the Record

Rehearing is warranted in this case for two reasons: the Opinion's assumption of facts in the absence of whole record of the case, and the grave and unintended repercussions that the Opinion will have for Petitioner's right of Due process of law. First, the crux of the Court's argument appears to depend on factual assumptions that no lower court adjudicated and remain hotly contested. Second, the Court should grant this petition for rehearing in the light of the consequences of its Opinion for the core constitutional rights of petitioner who is an American citizen. Moreover, the Court denied petition without a brief in opposition, the outcomes that would occur if the facts turned out to be different from those assumed by the Court for purposes of its ruling.

The Court should remand for an adjudication of facts on which the judgment depends. The appropriate occasion for full investigation and evaluation should be a rehearing, not merely the glimpse this petition provides. The issues are too weighty, and the impact on the States too disruptive not to merit the fullest and fairest hearing opportunity. The U.S. Supreme Court should intervened in rare instances where the standard appears to have misapprehended or grossly misapplied. Universal Camera Corp. v. NLRB, 340 U.S. 474, 491 (1951); Mobil Oil Corp. v. FPC, 417 U.S. 283. 310 (1951).

On the Supreme Court rests the prime responsibility for the proper function of the federal and the state jurisdiction, practice, and procedure reflects that responsibility. Such cases qualify for review by reason of their importance, novelty, or difficulty, with a conflict of decisions also playing a significant role. Where perceived errors concern an important and recurring constitutional, statutory, jurisdictional, or procedural problem, the grant of certiorari is necessary." William v. Lee, 358 U.S. 217 218 (1959).

Justice Harland, J. Dissenting in Hurtado v. California, 110 U.S. 516 (1884) wrote:
"... It is said by the court that the constitution of the United States was made for an undefined and expanding future that its requirement of due process of law, in proceedings involving life, liberty, and property, must be so interpreted as not to deny to the law the capacity of progress and improvement; that the greatest security for the fundamental of justice resides in the right of the people to make their own laws and alter them at pleasure."

III. The Court should grant Rehearing because State Courts were Repugnant to the Constitution

28 U.S.C. § 1257, stated:
"(A) Final judgment or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty of statute of the United States is drawn in question or where the validity of a statute of any

state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

In Cohens v. Virginia, 19 U.S. 6 Wheat. 264 (1821), the Court stated in pertinent part:
"This Court has, constitutionally, appellate jurisdiction under the Judiciary Act of 1789, c. 20 § 25, from the final judgment or decree of the highest court of law or equity of a state, having jurisdiction of the subject matter of the suit, where is drawn in question the validity of a treaty, or statue of, or an authority exercised under, any state, on the ground of their being repugnant to the Constitution."

State courts were repugnant to the Constitution, Fourteenth Amendment of equal justice, due process of law and equal protection of petitioner. The United States is devoted to the rule of law rather than the rule of judges. The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958).

The U.S. Supreme Court, in Scheurer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974) stated: "when a state officer acts under a state law in a manner volatile of the Federal Constitution, he "come into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and

is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

Any judge does not comply with his oath to the Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason. Having taken at least two, if not three oaths of office to support the Constitution is engaged in an act of treason. If a judge does not fully comply with the Constitution, then his orders are void. In re Swayer, 124 U.S. 200 (1888), he/she is without jurisdiction has engaged in an act or acts of treason.

IV. Abdication of Duty and Treason to the Constitution not to Take Jurisdiction

According to its own precedent, this Court would abdicating its duty and committing treason to the Constitution if it fails to grant certiorari under the facts and circumstances of this case. And to deny certiorari would be a denial of Due Process, arbitrary and capricious and an abuse of judicial discretion.

"It is most true that this Court will take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it

be brought before us. We have no more right to decline the exercise of jurisdiction which is given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously to perform our duty. In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the constitution and laws of the United States. We find no exception to this grant, and we cannot insert one." (Plaintiff's emphasis). Chief Justice Marshall famously cautioned: "It is most true that this Court will take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should ... We have no more right to decline the exercise of jurisdiction which is given, than usurp that which is not given." Cohens v. Virginia Wheat. 264, 404 (1821).

The Court most certainly has the obligation to hear and determine first impression cases such as this, dealing as it does with the construction of the Constitution. That is its essential role. To fail to do so would be an abdication of its primary duty at best, and "treason to the constitution" at worst, either way, a sure sign that the United States as well her court system has been comprised at the highest level.

CONCLUSION

"[1]**EQUAL JUSTICE UNDER THE LAW**". These words express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As final arbiter of the law, the Court is charges with ensuring the American people the promise of equal justice under the law and, thereby, also functions as guardian and interpreter of the Constitution.

For the foregoing reasons, the Petition for Rehearing should be granted, the opinion of February 23rd, 2009 vacated.

Respectfully Submitted,

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Woodbridge, Virginia 22191
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Dated: March 10th, 2009

CERTIFICATE OF PETITIONER

I, Samuel T. Bistawros, hereby certify that I have written this Petition for Rehearing in good faith and not for delay. Sworn under the penalty of perjury.

Samuel T. Bistawros

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1. These words, written above the main entrance to the U.S. Supreme Court Building.